

Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

ALIVIO MEDICAL CENTER)
Applicant) Docket # 93-16-982
) Parcel Index # 17-30-112-036
versus)
) Barbara S. Rowe
THE DEPARTMENT OF REVENUE) Administrative Law Judge
OF THE STATE OF ILLINOIS)

APPEARANCES: Lawrence B. Brodsky and Christopher B. Cohen, Attorneys
for Alivio Medical Center.

1. The Department's position in this matter, namely that Cook County

permanent parcel index number 17-30-112-036 should not be exempt from property tax for the 1993 assessment year was established by admission into evidence of Dept. Ex. Nos. 1-6.

2. Applicant acquired the property from Mercy Hospital by a quit claim deed dated March 31, 1992. (Dept. Ex. No. 1)

3. Applicant was incorporated under the Not-For-Profit Corporation Act of Illinois on March 21, 1988. (Dept. Ex. No. 1)

4. Applicant raised over six million dollars for the initial building and operations. (App. Ex. No. 1; Tr. pp. 13, 47)

5. On or about January 4, 1989, the applicant obtained a Chicago Community Trust Grant for a three-year period in the amount of \$987,227.00 to be used for applicant's operations. (Tr. p. 13)

6. Applicant's purposes are:

To promote, encourage, or foster any charitable, scientific, educational, research, or like purpose or activity, particularly:

- . To deliver primary health care services and health education to the community [sic] with a focus to those who are under-insured and non-insured.
- . To increase Hispanic access to comprehensive, affordable quality health care through the availability of bilingual and bi-cultural personnel.
- . To promote effective communication between Hispanic consumers and health providers.
- . To increase the representation of Hispanics in health care professions at all levels.
- . To increase the Hispanic community's knowledge and understanding of wellness and factors leading to ill health. (Dept. Ex. No. 1)1

7. Applicant is exempt from payment of Federal income tax pursuant to a 501(c)(3) designation by the Internal Revenue Service. (Dept. Ex. No. 1)

8. Carmen Velasquez is the founder and Director of the applicant. The applicant provides bilingual and bi-cultural primary health care to the insured, uninsured and under insured Spanish speaking population of the

community. (App. Ex. No. 1)

9. Ms. Velasquez' salary for office work for the taxable year in question was \$84,249.00. (Dept. Ex. No 1; Tr. pp. 80-81)2

10. The starting salaries for full-time doctors for the same period ranged from \$70,000.00 to \$90,000.00 depending on their experience. (Tr. p. 82)

11. All new patients are referred to the Financial Evaluator for assessment of their capabilities to pay. (Dept. Ex. No. 1)3

12. For any new patient who comes in and expresses financial need, a financial interview is done by an employee who documents the need and uses criteria based upon the Federal Register Guidelines tables. The employee places the patient on a financial scale based upon income and the number in the household. The evaluation is done on the first visit and six months thereafter. (Dept. Ex. No. 1; Tr. pp. 20-21)

13. The applicant follows the Poverty Income Guidelines as published in the Federal Register. (Dept. Ex. No. 1)

14. For billing and collection procedures, the applicant initially charges the same amount regardless of patient's financial classification. The bill then proceeds to the financial office where the applicant adjusts it based upon the financial class or category the patient fits into according to the information obtained in the financial interview. (Dept. Ex. No. 1; Tr. p. 22)

15. Applicant's general billing patient account is broken down into self-pay and Medicaid. For self-pay and sliding scale patients, the amount of charges minus the disallowance (based on the sliding fee scale) is collected on the day of the visit. (Dept. Ex. No. 1)

16. If the patient does not have the money, a statement of account is mailed the next business day. If the account remains unpaid, a patient statement of account is mailed in 30 day intervals until it is paid in

full. (Dept. Ex. No. 1; Tr. p. 109)

17. For patients whose account remains unpaid for more than 180 days, and after all collection efforts have been done, the account is written off, following the recommendation of the patient account coordinator and after the approval of the Director of Finance and the Executive Director. (Dept. Ex. No. 1; Tr. p. 22)

18. During patient visits, the applicant also requests payments of the charges. After the third billed request for payment, the applicant ceases collection efforts. (Tr. p. 22)

19. For the Medicaid FQHC (Federally Qualified Health Center) patients, charges are entered into the patient account on a fee for service basis. An adjustment is then entered to come up with the "encounter rate" established through the preparation of a cost report. Billing forms for these patients are mailed every Friday of the week and the reimbursements are entered individually to the patient account. For a rejected claim, if billable, the corrected claim form is mailed the next day. For an unbillable claim, an adjustment is made into the patient account after it is reviewed by the Director of Finance. If a Medicaid patient loses eligibility because of employment and/or other reasons, they are referred to the financial evaluator for the sliding scale designation. (Dept. Ex. No. 1)

20. In 1993, the applicant intended and did revise the patient fee schedule to cover its costs related to the delivery of its reduced fee care. For 1993, the charges for reduced fee care were \$153,805.00. The estimated costs and expenses incurred for reduced fee care were also \$153,805.00. The excess of cost over reimbursement for Medicaid patients was \$449,219.00. This equals a total of \$603,024.00 for costs for reduced fee and Medicaid patients. This amount represents 39% of the gross revenue that was taken as a loss by the applicant. (Dept. Ex. No. 1; Tr. pp. 108-

111, 126)

21. For the period from January 1993 through December 31, 1993, applicant had total operating revenues in the amount of \$2,279,556.00 and total expenses of \$2,216,839.00 for a net profit of \$62,717.00. (App. Post-hearing Ex. No. 1)

22. Applicant's fiscal year ends on June 30th. The total patient service revenues for the period ending June 30, 1993 were \$1,797,279.00. Applicant took a total revenue deduction of \$861,188.00 for what they called contractual allowance and charity care for a net patient amount of \$936,090.00. Total contributions were \$919,582.00 for a total operating revenue of \$1,855,673.00 for that period. Applicant's operating expenses were \$1,717,417.00, for a net profit of \$138,256.00. (Dept. Ex. No. 1)

23. The surplus revenue was carried over to the next year and used as a reserve for the operation of the facility. (Tr, p. 144)

24. As to applicant's income, contributions accounted for 25% of total revenue, federal grant income accounted for 15%, total patient fees accounted for 59% and other revenues accounted for 1%, equalling total support revenues of \$1,572,917.00 for the fiscal year ending June 30, 1993. (App. Ex. No. 4; Tr. p. 108)

25. Nearly 59% of the applicant's income comes from patient fees. These include Medicaid, Medicare, other third-party payment plans and direct patient collections. Of that 59% portion of the applicant's income; 78% was reimbursement for Medicaid patients, Medicare reimbursement was 2%, third-party reimbursement accounted for 5% and patient collections were 15%. (Tr. pp. 25-26)

26. Applicant has no policy for waiving fees. Applicant has no signs posted stating that they provide charity care. (Dept. Ex. No. 1)

27. The applicant has special programs including a complete nurse midwife program and a child maternity program for pre and post-natal

intensive care visits. (Tr. pp 13-14)

28. Applicant, in 1993, employed 3.5 physicians composed of a pediatrician, an internist, a family practitioner and a part-time Obstetrician. Applicant also employed one full-time nurse and a number of midwives in 1993. (Tr. p. 17-20)

29. Applicant's staff physicians are not allowed to engage in any private practice. (Tr. pp. 18-19)

30. However, the physicians may work at another clinic or hospital as well as at applicant's medical center. (Tr. pp. 87-95)

31. Prior to applicant's acquisition of the property, the property was granted exemption from property taxation, based upon its ownership by Mercy Hospital, pursuant to Department's docket number 89-16-1259. The fiscal agent for applicant was Mercy Hospital prior to 1993. (Tr. p. 14)

32. In February 1992, that relationship between Mercy Hospital and the applicant terminated. (Tr. p. 15)

33. Applicant still has a debt that it owes and is paying to Mercy Hospital in the amount of \$503,500.00 as of December 9, 1994. It also has an amount due each year for the next 13 years in the amount of \$20,000.00 for an advance from the Coleman Foundation. (App. Post-hearing Ex. No. 1)

34. The applicant has no capital stock or shareholders. (Tr. p. 15)

35. Applicant's services are available to anyone regardless of color, race, national origin, religion or gender. (Tr. p. 16)

36. The number of patients served by the applicant in 1993 was 4,760 and the number of patient visits that year was 19,125. (App. Post-hearing Ex. No. 1)4

37. There are 17 uncompensated members of the Board of Directors of the applicant. (Tr. pp. 32, 100)

38. The applicant has a relationship with the Cook County Hospital called the physician review and referral system linkage program where one

of applicant's physicians goes once a day to the Fantus Clinic. The Fantus Clinic and Cook County Hospital then refer adult patients to the applicant. (App. Post-hearing Ex. 1; Tr. p. 48)

39. The applicant runs a program called healthy moms/healthy kids funded by the Departments of Public Aid and Public Health. (Tr. p. 52)

40. At the property in question, the City of Chicago, through the Women, Infant and Children (WIC) program, provides formula and food stamps to those that qualify. A nutritionist employed by the City and State comes to the applicant three times a week to make an assessment of the clients entitled to WIC benefits. (Tr. p. 77-79; 138-139)

41. The building located at 2355 South Western Avenue has two stories. The first floor plan consists of: four waiting areas/lobbies; a nurses station; three consultant's offices; nine patient examination rooms; a staff lounge; a Dietitian's Office; an electrical room; a Radiologist/X-ray room; a Multi-Purpose Classroom which is used for nutrition classes, prenatal classes and CPR classes; a future Pharmacy area used for storage; and Activity Area I which was used for the WIC program and Physicians' review program, a program in which the applicant helps physicians from Spanish speaking countries find residency and prepare for exams. Activity Area I was also used in 1993 as a child's waiting room and is currently used as a triage room. There are various men's and women's toilet facilities on the floor.

The second floor has offices for the Medical Director, two Social Workers, the Community Outreach Worker, the Financial Department, the Director of Development, the Psychiatrist, the Education Coordinator and a Secretary. The floor also contains two conference rooms and a small medical library where the program, healthy moms/healthy kids, meets. (Dept. Ex. Nos. 1,5; Tr. pp. 29-32)

CONCLUSIONS OF LAW: Article IX, 6 of the Illinois Constitution of

1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The statutes of Illinois have provisions for property tax exemptions. In particular, 35 ILCS 205/19.7 exempts certain property from taxation in part as follows:

All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States, all property of old people's homes and facilities for the developmentally disabled, ...when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit;...All old people's homes or homes for the aged or facilities for the developmentally disabled...shall qualify for the exemption stated herein if upon making an application for such exemption, the applicant provides affirmative evidence that such home or facility...is an exempt organization pursuant to paragraph (3) of Section 501(c) of the Internal Revenue Code,...and...the bylaws of the home or facility...provide for a waiver or reduction of any entrance fee, assignment of assets or fee for services based upon the individual's inability to pay,...

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. *International College of Surgeons v. Brenza*, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. *People ex. rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363 (1941). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. *MacMurray College v. Wright*, 38 Ill.2d 272 (1967).

In *Crerar v. Williams*, 145 Ill. 625 (1893), the Illinois Supreme Court defined charity as follows:

A charity, in a legal sense, may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of

an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public government. It is immaterial whether the purpose is called charitable in the gift itself, if it is so described as to show that it is charitable in nature.

The Illinois Supreme Court has further refined the criteria established in *Crerar*. In particular, in the case of *Methodist Old Peoples Home v. Korzen*, 39 Ill.2d 149 (1968), the Court laid down six guidelines to be used in determining whether or not an organization is charitable. Those six guidelines are as follows:

- (1) The benefits derived are for an indefinite number of persons;
- (2) The organization has no capital, capital stock or shareholders, and does not profit from the enterprise;
- (3) Funds are derived mainly from private and public charity, and are held in trust for the objectives and purposes expressed in its charter;
- (4) Charity is dispensed to all who need and apply for it;
- (5) No obstacles are placed in the way of those seeking the benefits; and
- (6) The primary use of the property is for charitable purposes.

The fact that the applicant does not waive fees and therefore places obstacles in the way of those seeking the benefits means that the applicant does not meet the criteria enumerated in numbers four, five and six of the test of *Methodist Old Peoples Home*. The applicant also made a profit of \$138,256.00 for the period ending June 30, 1993, in contravention of criteria number two of *Methodist Old Peoples Home*.

A hospital which treats all its patients alike, and charges no fee where the patient is unable to pay, and a graduated fee according to ability to pay, but in no case makes any profit, is open to all without distinction as to race, religion or color; and is maintained by voluntary contributions of charitably inclined persons, is exempt from taxation.

German Hospital of Chicago v. Board of Review of Cook County, 233 Ill. 246 (1908).

In the instant case, the applicant would write off a bad debt after various attempts to collect it. This policy is not the same as not charging a fee when the patient is unable to pay, the standard set in German Hospital of Chicago. In this case a bill is sent, not just once but repeatedly, even to those patients who are unable to pay. The applicant does give service to all who request it, then sends bills to all patients and writes off those debts which they are unable to collect.

German Hospital also established the requirement that a charitable hospital does not make a profit, a standard that the applicant does not meet. In the fiscal year ending June 30, 1993, the applicant had a net profit of \$138,256.00. For the taxable year in question, the applicant had a net profit of \$62,717.00.

The Illinois Courts have consistently held that the use of property to produce income is not an exempt use even though the net income is used for exempt purposes. People ex. rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924)

In actions by corporations to have real estate declared exempt from taxation for certain years on the grounds that it is a charitable corporation, the Illinois Supreme Court has held that the certificate of incorporation is the controlling evidence of the purpose for which the organization was created. Oak Park Club v. Lindheimer, 369 Ill. 462 (1938) The applicant's articles of incorporation contain the standard language required for a 501 (c)(3) designation from the Internal Revenue Service. This language and the 501(c)(3) designation are not sufficient to establish that an applicant is charitable. The Supreme Court, in The People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill.2d 448 (1970) stated that exemption from federal income tax (and in that case, Illinois

sales tax) did not furnish material facts about the exclusive charitable nature of the applicant and the charitable use of the property under the Illinois constitution. The existence of the exemption is not determinative of the charitable nature of the applicant.

I also rely on the Hopedale cases to find that the doctrine of res judicata is not applicable in tax cases involving claims of exemption for different tax years. Hopedale Medical Foundation v. Tazewell County Collector, 59 Ill.App.3d 816 (1978). The fact that the applicant had a prior exemption when affiliated with Mercy Hospital is not determinative of the matter based upon Hopedale Medical Foundation.

Based upon the above law and analysis, I find that the applicant is not a charitable organization and the use of the parcel here in question was not charitable in 1993. I recommend that Cook County Parcel Index Number 17-30-112-036 remain on the tax rolls for the 1993 assessment year.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge

October 30, 1995

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1. The by-laws of the applicant state: The purpose of Alivio Medical Center is to promote, encourage or foster charitable, scientific, educational, research or like purpose, or activity, that will:
 - a. increase Hispanic access to comprehensive, affordable quality health care through the availability of bilingual and bicultural personnel;
 - b. increase the Hispanic community's knowledge and understanding of wellness and factors leading to ill health;
 - c. promote effective communication between Hispanic consumers and health providers; and
 - d. increase the representation of Hispanics in health care professions at all levels.(Dept. Ex. No. 1)(Emphasis added).

Due to the holding of the Supreme Court in Oak Park Club, the articles of incorporation of the applicant are the controlling evidence of the purpose of the applicant. It is not disputed that the applicant would provide care to any patient that required it, however that circumstance is not sufficient by itself to qualify an applicant as a charitable organization. The applicant emphasizes care of the

Hispanics in the community.

2. The witness for the applicant seemed confused about the actual amount of her salary. (Tr. pp. 80-81) This witness is the Director of the applicant and in that capacity is responsible for the day to day operation of the business as well as the responsibilities outlined in Article VII of the by-laws. (Dept. Ex. No. 1) It is presumed that she would have knowledge of the number of patient visits for the taxable year in question and would certainly have knowledge of her own salary.
3. Throughout the hearing, the witness for the applicant referred to some of the patients as charity patients. A reading of the transcript and exhibits reveals that these patients are in fact patients that pay a reduced fee based upon the financial interview. (Tr. p. 21)
4. The witnesses for the applicant testified at one point that approximately 7,145 patients were seen at the applicant in 1993 which equaled 26,314 visits during that year. (Tr. pp. 19) This conflicts with later testimony that stated that the number of patients in 1993 was actually 4,760 and the number of patient visits that year was actually 14,786. (Tr. pp. 140-141) The applicant in its post hearing exhibit stated that actual patient visits in 1993 were 19,125. I rely upon the exhibit because of the conflict in the oral testimony.